

OFFICIAL GAZETTE



GOVERNMENT OF GOA

EXTRAORDINARY

GOVERNMENT OF GOA

LEGISLATURE SECRETARIAT

Notification

No. LA/A/2608/1994

The following decision dated 22nd October, 1994 of the Speaker of Legislative Assembly of State of Goa given under Rule 8 (2) of the Members of Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 framed under the Tenth Schedule of the Constitution of India is hereby notified and published.

No. 93

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"In the matter of Petition filed by Shri Pandurang D. Raut, MLA against Shri Dharma Chodankar, MLA.

Order

Reference No. 7/92

Shri Pandurang D. Raut, MLA

— Petitioner.

V/s.

Shri Dharma Chodankar, MLA

— Respondent.

Shri Pandurang Raut, MLA of the Legislative Assembly of the State of Goa has filed a petition on 9-1-92 against Shri Dharma V. Chodankar, MLA of Legislative Assembly of the State of Goa that Shri Dharma V. Chodankar be disqualified for being a Member of the House under Article 191(2) of the Constitution of India read with the Tenth Schedule of the Constitution on the following grounds.

1. The respondent Shri Dharma V. Chodankar, MLA attended the Session of the Goa Legislative Assembly held on 13-12-91 to 27-3-1991 but voted contrary to the directives issued by M. G. Party (Ravi Naik Group) thereby the respondent has incurred disqualification under para 2(i) (a) & (b) of the Tenth Schedule of the Constitution of India.

2. The respondent and Shri R. D. Khalap, Leader of M. G. Party were given a copy of the petition to furnish their comments within 7 days from the date of receipt of the same under Rule 7 of Members of Goa Legislative Assembly (Disqualification on Grounds of Defection) Rules 1986.

3. Shri R. D. Khalap and the respondent Shri Dharma Chodankar, vide their letter, dated 17-1-1992 prayed 2 weeks and 3 weeks time respectively for filing their comments and were granted time till 16-3-92 to file their comments.

4. The petitioner vide his application dated 15-1-1992 prayed for amendments of the plaint stating that in the said petition the typing error has occurred on page 1, line 2 wherein instead of words "Maharashtrawadi Gomantak Party" the words "Indian National Congress" has been typed and he further stated that the said error was on account of typing lapse and the amendment may be carried out in the following terms. Delete the words "Indian National Congress" appearing in para No. 1 in line 2 on page 1 and substitute the words "Maharashtrawadi Gomantak Party".

5. As the petitioner stated it was a typing error and it was apparent on the face of record the amendment of the petitioner was allowed.

6. The respondent Shri Dharma V. Chodankar and Shri R. D. Khalap, Leader of M. G. P. Party filed their comments on 27-2-1992.

7. The respondent subsequently made an application on 7-4-1992 for amendment of written statement stating that after para 4 add the following para 4 (a) without pre-judice to the foregoing and without admitting any averments of admitting the petition it is submitted as follows:

(a) The so-called Maharashtrawadi Gomantak Party (Ravi Naik Group) with all its so-called members including petitioner herein have merged/joined the Indian National Congress (I). The Maharashtrawadi Gomantak Party (Ravi Naik Group) therefore does not exist and hence the petitioner has no locus standi and cause of action with the respondent herein. The petition is therefore liable to be dismissed in limine. Advocate for the petitioner did not object to the amendments and the same was carried out.

The facts of the case are as follows:—

The contention of the petitioner is that the respondent alongwith the petitioner and six other members of the Legislative Assembly belonging to the Maharashtrawadi Gomantak Party namely S/Shri Ravi S. Naik, Shankar K. Salgaonkar, Ashok T. Naik Salgaonkar, Sanjay Bandekar, Ratnakar Chopdekar and Vinaykumar Usgaonkar, declared a split in the Maharashtrawadi Gomantak Party and constituted a separate party known as "Maharashtrawadi Gomantak Party" (Ravi Naik Group) at a meeting held on 24-12-90 at the residence of Shri Ravi Naik at Ponda.

The petitioner states that the other members of the Legislative Assembly constituted a split has confirmed that the

fact in the replies filed by them as well as in their affidavits in the matter of reference Nos. 3/91, 4/91, 5/91, 6/91 as well as in the review application filed by Shri Ravi S. Naik and S/Shri Ratnakar Chopdekar and Sanjay Bandekar.

The petitioner further states that subsequently the respondent defected again from "Maharashtrawadi Gomantak Party" (Ravi Naik Group) and joined "Maharashtrawadi Gomantak Party". The respondents has even confirmed the position of his subsequently being in the Maharashtrawadi Gomantak Party (Ravi Naik Group) in his letter dated 14-1-1992 addressed to H. E. the Governor of Goa with a copy thereof addressed to the Hon. Speaker. Thus the respondent has voluntarily given up the membership of the Maharashtrawadi Gomantak Party (Ravi Naik Group) and has incurred disqualification under para 2 (1) (a) & (b) of the Tenth Schedule.

The Petitioner states that the Leader of the M. G. P. Party (Ravi Naik Group) has submitted the information to the Hon. Speaker about the Constitution of split in the party on 12-2-91 and again in the prescribed form on 18-2-1991.

The petitioner further states that the M. G. P. (Ravi Naik Group) issued whip which was published in the daily newspaper calling upon the members of M. G. P. (Ravi Naik Group) to attend the Session of the House and vote in accordance with the directives of the M. G. Party (Ravi Naik Group). The respondent attended the session of the Legislative Assembly held on 13-2-1991 to 27-3-1991 but voted contrary to the directives issued by the M. G. Party (Ravi Naik Group). The respondent therefore has incurred disqualification under para 2(1) (a) & (b) of the Tenth Schedule to the Constitution of India. The contention of the petitioner is that no prior permission was obtained for such act nor the same was condoned by the M. G. Party (Ravi Naik Group). In the circumstances the petitioner is satisfied and has reasonable grounds to believe that the respondent has become subject to disqualification under the Tenth Schedule.

The petitioner therefore submits that the respondent has incurred disqualification under para 2(1) (a) & (b) of Tenth Schedule of the Constitution of India for being a member of the House.

The respondent filed his comments on 27-2-1992 and stated therein that the petition is barred by laches/limitation and is vitiated by political bias and malafides.

The respondent denies that along with the petitioner or any other Members of the Legislative Assembly belonging to the Maharashtrawadi Gomantak Party or S/Shri Ravi S. Naik, Shankar Salgaonkar, Sanjay Bandekar, Ratnakar Chopdekar, Vinaykumar Usgaonkar and the respondent declared a split in M. G. P. or constituted a separate party known as Maharashtrawadi Gomantak Party (Ravi Naik Group). He further denies that there was any split in the M. G. P. and the respondent is not at all aware and does not admit that any meeting took place on 24th December, 1990 at the residence of Shri Ravi S. Naik or was attended by S/Shri Gurudas Malik or Avinash Bhonsle or any other members of the M. G. P.

The respondent states that the purported split in the MGP claimed by S/Shri Ravi S. Naik, Shankar Salgaonkar, Ashok T. Naik Salgaonkar, Sanjay Bandekar, Ratnakar Chopdekar, Vinaykumar Usgaonkar and the petitioner is fictitious and that the affidavits allegedly filed by them in the matter of references Nos. 3/91, 5/91, 4/91, 6/91 as also purported review application filed by Shri Ravi S. Naik and S/Shri Ratnakar Chopdekar and Sanjay Bandekar are false.

The respondent states that in the morning of 14th January 1991 the respondent was gheraoed by S/Shri Ravi S. Naik, Shankar K. Salgaonkar and the petitioner, MLAs at Ribandar and under duress forced him to sign on a paper purporting to claim a split in the MGP Legislature Party. The respondent therefore addressed a letter on 14-1-1991 to the Hon. Speaker and also the Governor of Goa of the said action of S/Shri Ravi S. Naik, Shankar K. Salgaonkar and the petitioner and the respondent pledging his continued support to the MGP and Shri R. D. Khalap, the Leader of the MGP Party. The respondent denies that there is any Party known as MGP (Ravi Naik Group) or that the respondent was at any time its Member. He further denies that he defected from the fictitious MGP (Ravi Naik Group) or gave up the membership of the alleged party. The respondent denies that he has incurred disqualification under para 2 (1) (a) & (b) of the Tenth Schedule to the Constitution of India. The respondent

is not aware and does not admit that the fictitious Leader of the MGP (Ravi Naik Group) has submitted any information to Hon. Speaker or about the Constitution of the alleged split party on 12-2-1991 or in a prescribed form on 18-2-1991.

The respondent states that the purported minutes of the alleged meeting of 24-12-1990 are bogus and fabricated much later. The purported signatures on the minutes have been obtained much later, after 24-12-1990. The respondent's signatures was forcibly procured on 14-1-1991. Neither the name nor the signature of the respondent nor of Shri Vinaykumar Usgaonkar appear on the alleged MGP meeting on 24-12-1990. Shri Vinaykumar Usgaonkar was with the MGP at least as late as on 31-1-1991 as witnesses his signatures on the minutes of the meetings. The parties filed their draft issues out of which the following were treated as the preliminary issues:

- 1) Whether the respondent proves that the petition is liable to be dismissed in limine for laches, delay and limitation.
- 2) Whether the respondent proves that the petition is liable to be dismissed in limine for non-compliance with the provision of disqualification on ground of defection rules and especially absence of verification of the petition and documents accompanying it.
- 3) Whether the respondent proves that the annexures are not verified in the prescribed manner.
- 4) Whether the respondent proves that the petition is liable to be dismissed in limine on the ground that M.G.P. (Ravi Naik Group) is not and was never in existence and the petitioner therefore has no locus standi to file the petition for disqualification.

While arguing the issue No. 1 the learned council for the respondent Shri Ramakant D. Khalap stated that the petition is liable to be dismissed in limine for laches, delay and limitation. He referred the judgements of the High Court of Judicature of Bombay, Goa Bench, in the writ petition Nos. 8 of 1992 and 11 of 1992 first of which was filed against Shri Sanjay Bandekar and Shri Ratnakar Chopdekar by Shri Ramakant D. Khalap, petitioner and the second was filed by Dr. Kashinath Jhalmi and Shri Ramakant D. Khalap, petitioners against Shri Ravi S. Naik, in these judgement of the High Court has held that the petitions are not liable on the ground of delay and laches. He quoted paragraph 23 of the writ petition No. 11 of 1992 judgement dated 4th February, 1992, where it was held by High Court, taking into consideration the above mentioned facts and submissions, we are of the opinion that by not challenging the order of the Deputy Speaker dated 7th and 8th March, 1991 within reasonable time by taking the role of silent spectator at the time of the order of dismissal dated 22nd April, 1991, writ petition No. 48 of 1991 the petitioners by their conduct are stopped from challenging the impugned order, of the Deputy Speaker dated 7th & 8th March, 1991. The identical point in both the cases is that after the date which is alleged that the cause of action arose, the petitioner remained silent without taking any action for a considerable long period and further he has not explained his reasons for the delay. According to the petitioner, the cause of action arose on 14-1-1991, when the respondent came back to the original M. G. P. Party. There is no limit prescribed to file the petition in the Tenth Schedule of the Constitution of India.

Shri Ramakant Khalap argued the issue No. 2 and 3 as regard verification of the petition and the documents accompanying it and also stated further that the annexures are not verified in the prescribed manner. Verification must be there in the affidavit, otherwise no annexures can stand.

The counsel for the respondent submitted that the petitioners statements in the respective paras made by him in the plaint and while verifying the same stated that whatever statements made by him in the plaint are true to his own knowledge. Even some of the legal submissions have been termed by the petitioners that they are true to his own knowledge. The prayer made in the petition has also been stated that it is true to his own knowledge. Therefore, the counsel laid stress that it was a bad and the faulty verification and therefore prayed the petition is liable to be dismissed in limine. The petitioner himself has not filed any affidavit in this case and the verification that he has relied on the annexures, the annexures should have been verified in the same manner as the petition is verified.

Rule 6 of the Members of the Goa Legislative Assembly (Disqualification on grounds of Defection) Rules, 1986 speaks how the petition is to be filed. No reference for any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member in accordance with the provision of this rule. No reference for any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member in accordance with the provision of this rule.

Every petition (a) shall contain a concise statement of the material facts on which the petitioner relies (b) shall be accompanied by copies of the documentary evidence if any, on which the petitioner relies and where petitioner relies on any information as furnished by each such person. He pointed out in the petition certain information given is obtained from a particular source. In the verification it should have been stated under para 6(b). Then vide rule (6) of the Rules every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for verification of pleadings. The Rule (7) every annexures to the petition shall be signed by the petitioner and verified in the same manner as the petition. This is according to Rule 6 sub-rule 7.

On receipt of the petition under Rule 6, the Speaker shall consider whether the petition complies to the requirement of this Rule 6(2). If the petition does not comply with the requisite requirements of the rules, the Speaker shall dismiss the petition and intimate the petitioner accordingly. So the verification and the annexures is mandatory under Rule 6. In support of his contention the counsel for the respondent relied on the two orders passed by Hon. Speaker Shri Surendra Sirsat dated 13-12-90 filed by Shri Domnick Fernandes & versus six members of the Legislative Assembly and second dated 6-2-1991 filed by Shri Mohan Amshekar versus six members of the Legislative Assembly.

The counsel for the respondent referred to the para 11 of the petition wherein the petitioner stated therein that he wishes to place on record that subsequently Maharashtrawadi Gomantak Party (Ravi Naik Group) has merged into Congress (I). And in respondent's amendment to his reply a specific averment was made in para 4 A says - that without prejudice of foregoing and without admitting any averments of the petition it is submitted as under: The so-called Maharashtrawadi Gomantak Party (Ravi Naik Group) together with all its so called Members, including the petitioner herein have merged or joined the Indian National Congress (I), the M. G. P. (Ravi Naik Group) does not exists.

This statement has been made and this has gone without any objection. The advocate has not replied to this. No affidavit has been filed on this.

There was a party formed called Maharashtrawadi Gomantak Party (Ravi Naik Group) after the split in the original M. G. P. and the whole M. G. P. (Ravi Naik Group) joined the Congress (I) and after the M. G. P. (Ravi Naik Group) joined the Congress (I), the M. G. P. (Ravi Naik Group) was no more in existence.

In support of his contention, the counsel for the respondent relied upon the similar case, *Stewart Science College & anr. V/S. Braja Sundar Das & Ors. A. I. R. 1969 Orissa 137*.

He further contended that any member can file a petition in writing to the Speaker, there need not be a group whether it is M. G. P. (Ravi Naik Group) or not and therefore he quoted Rule 2 sub-rule 6 of (The Member Disqualification on the ground of Defection Rules) 1986. According to the respondent they did not recognise MGP (Ravi Naik Group) at all and they say that there was no such group. But the counsel for the petitioner argued further and referred to the matter before the Election Commission for claiming the symbol and the same was contested by the MGP and to that there is a speaking order, of the Election Commission which was decided in MGP's favour. He further stated that on the date when the defection took place there was MGP (Ravi Naik Group) and the respondent defected from MGP (Ravi Naik Group).

The counsel for the petitioner referred to para 7 of the petition on the other hand the counsel for the petitioner submitted that there is no limitation prescribed to file such type of petition. For this, he cited Rule 3, 4 and 6 of the Member Disqualification on Grounds of Defection Rules

wherein time was prescribed for particular act. The contention of the counsel was that in the absence of the prescribed period, the Limitation Act comes into force and the only sections that may be applicable here is 133 or 137 of the limitation Act. In both sections the limitation prescribed is three years. He further submitted that two judgements on which the respondent relied upon are not at all applicable in this case because that is on totally different footing this is the petition filed before the Speaker and in the other petition. Wherein the order has been passed about the laches being fatal to the filing of the petition, that the leader of the MGP (Ravi Naik Group) has submitted the information to the Hon. Speaker about the constitution of split party on 12-2-1991 and again in prescribed form on 18-2-1991.

The counsel for the petitioner submitted that the verification done by him is proper. According to him that even otherwise assuming that it is not proper, it is not fatal. It can be cured.

While replying to the point raised by the counsel for the respondent regarding the improper verification the counsel for the petitioner stated that the other members of the Legislative Assembly who constituted a split have confirmed the fact into replies filed by them as well as in their affidavit in the matter of reference Nos. 3/91, 4/91, 5/91, 6/91 as well as in the review application filed by Shri Ravi S. Naik, and S/Shri Ratnakar Chopdekar and Sanjay Bandekar. The petitioner craves leave to refer to and rely upon the said proceedings before Hon. Speaker. As far as knowing the same to his own knowledge is concerned, the counsel submitted that they have been part of the proof, everything which was done on one table. He further contended that they know what affidavits have been filed by them and they stood by them and that they stand by their statement that they know what was sworn in. These affidavits so to say what they know is nothing bad at all in that. They very much know about that.

He further contended that if the petition is signed by a lawyer and it is not verified it is not fatal. To lay stress on his argument he referred to the *Supreme Court's decision 1964 page 1545-Representation of People's Act (1951) Sec. 82. Act (1951) S. 83(1) (C)-Election Petition-Verification defect in -Defect can be cured-it is not fatal to Election Petition.*

A defect in verification in the matter of election petition is a matter which comes within C1 (c) of Sub S (1) of S 83. The defect can be removed in accordance with the principles of Code of Civil Procedure 1908. Such a defect does not attract sub S (3) of S 90 in as much as that sub-section does not refer to non-compliance with the provisions of S. 83 as a ground for dismissing an election petition. Hence reading the relevant sections in Part VI of the Act it is impossible to accept the contention that a defect in verification which is made in the manner laid in the code of Civil Procedure 1908 for verification of pleadings as required by C1 (c) of sub S(1) of S. 83 is fatal to the maintainability of the petition.

He further quoted a case where a pleader signed and the party did not sign i.e. 1977 Himachal Pradesh. Civil procedure Code order 6, Rule 18 and 15. He also quoted AIR 1961 Bombay.

He further pointed out Civil Procedure Code order 6 rule 14 and 15 provisions which merely relates to procedure defects in preserving, signing of verification of plaint not fatal can be cured by amendment even after limitation.

On the point of annexures the photocopies of which are filed by the petitioner. The counsel states that the originals will be provided at the time of evidence and he was not bound to give the original at this stage. The annexures are attested by the notary after seeing the originals. He further stated that the petition can be filed without a document also.

After hearing the facts and submissions made by both the parties my findings are as follows:—

As regards the issue No. 1 regarding laches, delay, and limitation I fail to understand why this petition has been filed after a period of one year, in the entire petition there is not even single statement made regarding the cause for delay of filing petition after a period of one year. The respondent in this case went back to the original party MGP after defecting from the MGP (Ravi Naik Group) on 14-1-1991 and the said petition has been filed by the petitioner on 9-1-1992 that is after a period of one year. I find that there

has been a deliberate and a intentional delay in filing the petition and the said petition has been filed after the writ petition in the High Court against Shri Ravi Naik and two other Members were filed and after the Supreme Court's judgement on para 7 of the Tenth Schedule to the Constitution of India. Though the case merits elucidating evidence to verify certain facts I find that no purpose will be served as the petitioner is at fault for not filing this petition on the date of cause of action, hence this issue is decided against the petitioner.

As regards issue No. 2 & 3, the para (6) of Tenth Schedule of the Tenth Schedule states that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure Code 1908 (Central Act 5 of 1908) for verification of pleadings. Then para (7) of Tenth Schedule every annexures to the petition shall be signed by the petitioner and verified in the same manner as the petition. The verification of the petition and the annexures is mandatory under Rule-6. The petitioner himself has not filed any affidavit in this case and in the verification the petitioner has relied on annexures, the annexures should be verified in the same manner as the petition is verified.

The petitioner in his verification has stated that the statements i. e. his averments made by him in the forgoing paras are true to his own knowledge. Even some of the legal submission averted in his* plaint has been said that its true to his own knowledge. Therefore the verification of the petitioner is bad and faulty and it is also not in accordance with the Code of Civil Procedure Code. This issue is also answered against the petitioner. As regards issue No. 4 the petitioner have already stated in para 11 of the petition that the petitioner wishes to place on record that subsequently Maharashtrawadi Gomantak Party (Ravi Naik Group) has merged into Congress-I and to the amendment the respondent in his reply has specifically averted in para 4A- that without prejudice of the foregoing and without admitting any averments of the petition it is submitted as under:— The so

called MGP (Ravi Naik Group) together with all its so called Members, including the petitioner herein have merged or joined the Indian National Congress-I, MGP (Ravi Naik Group) does not exists and hence the petition has no locus standi and the cause of action against the respondent herein. To this averment no replies has been filed by the petitioner.

There was a party called M.G.P. (Ravi Naik Group) after the split in the original M. G. P. and the whole M. G. P. (Ravi Naik Group) joined the Congress-I together with all its members including the petitioner herein and M. G. P. (Ravi Naik Group) was no more in existence, hence there was no group existing at the time of filing this petition hence the issue is answered against the petitioner.

Therefore my findings to the issues at 1, 2, 3 and 4 are answered in the affirmative.

I therefore, dismiss the petition. No order as to costs.

(SHAIKH HASSAN HAROON)

Speaker

Panaji-Goa

Dated: 22nd October, 1994.

To:

- 1) Shri Dharma Chodankar, MLA.
- 2) Shri Pandurang D. Raut, MLA.
- 3) Shri Ramakant D. Khalap, Leader of Maharashtrawadi Gomantak Party, Panaji-Goa.
- 4) Secretary, Chief Election Commission of India.
- 5) Chief Secretary, Government of Goa, Panaji Goa.
- 6) Secretary to Governor, Goa.

Copy to:

The Chief Minister of Goa, Panaji-Goa.